

1 BROWN RUDNICK LLP
David J. Molton (SBN 262075)
2 (DMolton@brownrudnick.com)
Seven Times Square
3 New York, New York 10036
Telephone: (212) 209-4800
4 Facsimile: (212) 209-4801

5 BROWN RUDNICK LLP
Joel S. Miliband (SBN 077438)
6 (JMiliband@brownrudnick.com)
2211 Michelson Drive, Seventh Floor
7 Irvine, California 92612
Telephone: (949) 752-7100
8 Facsimile: (949) 252-1514

9 *Attorneys for the Fire Victim Trustee*

10
11 **UNITED STATES BANKRUPTCY COURT**
12 **NORTHERN DISTRICT OF CALIFORNIA**
SAN FRANCISCO DIVISION

13 In re:

14 **PG&E CORPORATION,**

15 **- and -**

16 **PACIFIC GAS AND ELECTRIC**
17 **COMPANY,**
18 **Debtors.**

- 19 ☐ Affects PG&E Corporation
20 ☐ Affects Pacific Gas and Electric Company
21 ☒ Affects both Debtors

22
23 ** All papers shall be filed in the Lead Case,
No. 19-30088 (DM).*

Case No. 19-30088 (DM)
Chapter 11
(Lead Case)
(Jointly Administered)

**FIRE VICTIM TRUSTEE'S OBJECTION
TO MOTION TO ALLOW/DEEM TIMELY
LATE FILING OF PROOF OF CLAIM
BY FERN ELIZABETH FISHER;
MEMORANDUM OF POINTS AND
AUTHORITIES; DECLARATION OF
ALICIA ZIMMERMAN IN SUPPORT**

[Relates to Docket Number 13324]

Hearing Date: January 10, 2023

Hearing Time: 10:00 a.m.

Place: Hearing will be conducted telephonically or
by video

1 Cathy Yanni, in her capacity as the Trustee (the “**Trustee**”) of the Fire Victim Trust, by and
2 through her undersigned counsel, hereby submits this Objection to the *Motion to Allow/Deem*
3 *Timely Late Filing of Proof of Claim by Fern Elizabeth Fisher; Memorandum of Points and*
4 *Authorities; Declaration of Alicia Zimmerman in Support Thereof* [Docket No. 13324] (the
5 “**Motion**”) filed on December 7, 2022 seeking to have proof of claim 109639 (the “**Proof of**
6 **Claim**”) filed October 26, 2022 on behalf of Fern Elizabeth Fisher (“**Movant**”) deemed “timely”
7 for the purpose of administration by the Trust. In support of this Objection, the Trustee
8 respectfully states as follows:

9 **PRELIMINARY STATEMENT**

10 The Fire Victim Trust understands that the Fires caused by PG&E in 2015, 2017 and 2108
11 made it hard for survivors to undertake many everyday tasks due displacement, trauma and other
12 factors. The Trust has been extremely accommodating with respect to late claims and has made
13 every effort to allow as many Fire Victims as possible to present their claims to the Trust for
14 consideration. Nevertheless, the Trustee must balance the Trust’s efforts to address as many Fire
15 Victim Claims as possible against the fact that 82,692 Fire Victims – many of whom suffered
16 horrific losses – were able to file timely proofs of claim and are prejudiced by the acceptance of
17 late claims.

18 The Trust had awarded determination notices for more than 90% of all claim questionnaires
19 that have been submitted to the Trust as of December 15, 2022. The awards associated with those
20 determination notices total \$14.53 billion. Until all claims are determined, all determinations are
21 accepted and all of the Trust’s PG&E Stock is fully monetized, the Trust is unable to predict with
22 certainty the amount of funds available to pay Fire Victim Claims. The economic prejudice to the
23 Trust’s beneficiaries of allowing more late claims into the Trust is manifold, as an increasing
24 number of claims leads to increased administrative expenses and unanticipated adjustments to the
25 Trust’s economic modeling and payments. In addition, all late claims serve to delay final payment
26 to Fire Victims who filed timely proofs of claim because the Trust (and other Fire Victims) must
27 wait for late claimants to submit their claims questionnaires and supporting documentation to the
28 Trust before the Trust can begin to administer those claims.

1 Now, nearly three years past the Extended Bar Date, the Trust must be allowed to focus on
2 the claims already submitted and administered and work toward providing closure to those Fire
3 Victims. Absent exceptional circumstances, no further claims should be channeled to the Trust.

4 **RELEVANT BACKGROUND**

5 1. On January 29, 2019, PG&E Corporation (“**PG&E Corp.**”) and Pacific Gas and
6 Electric Company (“**Utility**”), as debtors and debtors in possession (collectively, “**PG&E**” or the
7 “**Debtors**”), commenced with the Court voluntary cases under chapter 11 of the Bankruptcy Code
8 (the “**Chapter 11 Cases**”). The Reorganized Debtors filed the Chapter 11 Cases to address the
9 billions of dollars of damage and loss relating to the devastating 2015, 2017 and 2018 California
10 fires and to provide compensation to wildfire victims.

11 2. On February 12, 2019, the United States Trustee (the “**U.S. Trustee**”) appointed an
12 Official Committee of Unsecured Creditors. On February 15, 2019, the U.S. Trustee appointed an
13 Official Committee of Tort Claimants (the “**TCC**”).

14 3. On March 14, 2019, the Debtors filed their schedules of assets and liabilities. By
15 Order dated July 1, 2019, the Court established October 21, 2019 (the “**Bar Date**”) as the last date
16 to file proofs of claim in the Chapter 11 Cases [Docket No. 2806] (the “**Bar Date Order**”). By
17 Order dated November 11, 2019, the Court extended the Bar Date to December 31, 2019 (the
18 “**Extended Bar Date**”) for unfiled, non-governmental Fire Claimants [Docket No. 4672] (the
19 “**Extended Fire Victims Bar Date Order**”)

20 4. The Extended Fire Victims Bar Date Order was entered in response to a motion filed
21 by the TCC. The TCC argued that the Bar Date “should be extended for the fire victims on the
22 ground that evidence filed herewith establishes that a large number of victims are not filing claims
23 in these chapter 11 cases because they are impaired from filing. Their impairments include
24 emotional distress, suffering from trauma caused by the wildfire that destroyed everything they
25 own, confusion caused by the trauma, a lack of awareness of the fire claims bar date, and a belief
26 that a claimant needs to be insured to file a claim.” [Docket No. 4293 at 5:2-8]. In considering the
27 TCC motion and approving the resulting stipulation between the TCC and the Debtors, this Court
28 has already considered and addressed the adequacy of notice to Fire Victims. Movants’ allegation

1 that “in this case, there was no widely distributed notice to residents impacted by the subject fires”
2 is contrary to the facts well-known by this Court. The Debtors provided a well-publicized notice of
3 the Extended Bar Date – the *second notice* provided to Fire Victims of the claims bar date – and
4 coordinated with TCC for the appointment of a Claims Representative who designed and
5 implemented with his team an expansive outreach effort designed to identify, locate, and assist Fire
6 Victims who were eligible to file claims but failed to do so by the original bar date. As a result of
7 the Court’s careful consideration of this issue and the thoughtful manner in which the Debtors
8 redoubled their efforts to reach additional Fire Victims, more than 82,000 claimants filed their
9 claims in a timely manner.

10 **OBJECTION**

11 5. Movant filed her Proof of Claim 1,030 days after the Extended Bar Date. Although
12 the Motion attributes the delay in filing to Movant’s homelessness, it also states that Movant “was
13 unaware of PG&E’s bankruptcy and her ability to file a proof of claim for her damages leading to
14 her homelessness” prior to September, 2022 [Dkt. No. 13324, Exhibit 1 at 18-19]. The Trustee
15 does not wish to minimize the difficult circumstances forced upon Movant by the North Bay Fires.
16 However, it appears that the reason for Movant’s failure to file a timely proof of claim was not
17 related to her homelessness but instead was due to the fact that she was not aware that her claims
18 against PG&E might be compensable. As the Court has recognized, this reason does not
19 sufficiently “explain why the failure to file a claim for over two and a half years constitutes
20 excusable neglect.” [Dkt. No. 13376 6:14-16].

21 **Equity Favors the Fire Victims who Filed Timely Claims**

22 1. The Supreme Court has opined that “that the determination [of whether to allow a
23 late-filed claim to be deemed timely] is at bottom an equitable one, taking account of all relevant
24 circumstances surrounding the party's omission.” *Pioneer Inv. Services Co. v. Brunswick*
25 *Associates Ltd. Partnership*, 507 U.S. 380, 395, 113 S. Ct. 1489, 1498 123 L. Ed. 2d 74 (1993).
26 The interests the Court is being asked to balance here are not those of Movant versus those of the
27 Debtors as framed in the Motion, but those of Movant versus those of the Trust and its
28 beneficiaries, the more than 82,000 Fire Victims who filed proofs of claim by the Extended Bar

1 Date despite often seemingly insurmountable odds. All of those timely Fire Victims must wait
2 until **all** claims – including the claim the Motion now requests this Court to deem timely – have
3 been determined before they will find out how much of their claims can be paid. It would be
4 inequitable to allow Movant’s late claim to dilute and delay the payment of timely filed claims held
5 by Fire Victims who have engaged with the Trust from its inception.

6 2. The Motion relies primarily upon the Supreme Court opinion in *Pioneer*. Notably,
7 in *Pioneer*, counsel had filed the claimant’s proof of claim only 20 day after the bar date and the
8 Supreme Court found that the bar date notice in that case contained a “dramatic ambiguity”
9 regarding the bar date. By contrast, the Proof of Claim was filed nearly three years after the
10 Extended Bar Date. In addition, the notice of the Extended Bar Date was the **second** notice
11 provided to potential Fire Victims and it was carefully crafted to inform that group of the deadline
12 to file any claims arising from a Fire.

13 3. While courts have decided that there is no harm to **the debtor** in allowing late claims
14 to be considered when a solvent debtor is paying all claims in full in a bankruptcy case, in this case
15 the Debtors are not paying any additional consideration to the Trust no matter how many late
16 claims are added. Pursuant to Section 6.8(b) of the Plan and Paragraph 18(e)(iii) of the
17 Confirmation Order, the Trustee has stepped into the Debtors’ shoes with respect to Fire Victim
18 Claims. The relevant inquiry in a request to deem a late Fire Victim Claim timely is how the
19 requested relief will affect the Trust rather than the Debtors, and specifically the effect on the
20 Trust’s beneficiaries, the Fire Victims. Every late claim accepted by the Trust – even those that are
21 ultimately deemed non-compensable – takes time and money from Fire Victims who have met all
22 deadlines and are waiting for their final payments.

23 4. As this Court has recognized, claimants who file late proofs of claim bear “the
24 burden of presenting facts demonstrating excusable neglect.” *In re Pacific Gas & Elec. Co.*, 311
25 B.R. 84, 89 (2004) (citing *Key Bar Invs., Inc. v. Cahn (In re Cahn)*, 188 B.R. 627 (9th Cir. BAP
26 1995)). The assertion that Movant was not aware she may have a compensable claim does not
27 meet this burden. In discussing the “excusable neglect” standard of Bankruptcy Rule 9006(b)(1),
28 the Supreme Court referred to the interpretation of Rule 6(b) of the Federal Rules of Civil

1 Procedure and acknowledged that “inadvertence, ignorance of the rules, or mistakes construing the
2 rules do not usually constitute ‘excusable’ neglect.” *Pioneer*, 507 U.S. at 392, 113 S. Ct. at 1496.

3 **Application of Pioneer Factors**

4 5. In *Pioneer Inv. Services Co. v. Brunswick Associates Ltd. Partnership*, 507 U.S.
5 380, 113 S. Ct. 1489, 123 L. Ed. 2d 74 (1993) the Supreme Court applied the majority of what was
6 then the Ninth Circuit test for determining whether a failure to timely file a proof of claim was due
7 to excusable neglect: (1) whether granting the delay will prejudice the debtor; (2) the length of the
8 delay and its impact on efficient court administration; (3) whether the delay was beyond the
9 reasonable control of the person whose duty it was to perform; and (4) whether the creditor acted in
10 good faith. *Pioneer*, 507 U.S. at 395, 113 S. Ct. at 1498.

11 **Deeming Movant’s Late Claim “Timely” Will Prejudice Other Fire Victims**

12 6. The first consideration in determining whether a late claim filing was the result of
13 “excusable neglect” under *Pioneer* is the danger of prejudice to the debtor. This factor is irrelevant
14 in the present case because the Trust has taken the place of the Debtors with respect to Fire Victim
15 Claims. While it is true that the relief requested in the Motion will not prejudice the *Debtors*,
16 which have already satisfied their funding obligations to the Trust under the Plan, it most certainly
17 prejudices the Trust and its Fire Victim who timely filed proofs of claim arising from Fires in these
18 cases.

19 7. The *Pioneer* Court noted that “that the determination is at bottom an equitable one,
20 taking account of all relevant circumstances surrounding the party's omission.” *Id.* Equity does not
21 support the filing of a late claim because the claimant has only recently become that others are
22 being paid by the Trust for similar claims. This Court already considered and confirmed the
23 adequacy of the notice of the Extended Bar Date and thousands of Fire Victims with similar claims
24 filed timely claims. For these reasons, the first factor does not support allowing Movants’ late
25 claims.

26 ///

27 ///

28 ///

1 **The Length of Movants' Delay is Extreme and Negatively Impacts Trust Administration**

2 8. The second consideration under *Pioneer* is the length of delay and its potential
3 impact on judicial proceedings. The Proof of Claim was filed 1,030 days after the Extended Bar
4 Date. As noted above, the Trust has a limited fund from which to pay all Fire Victim Claims. As
5 such, the Trust cannot finally determine how much it can pay on account of any Fire Victim Claim
6 until it adjudicates every Fire Victim Claim.

7 9. The continued addition of claims to the Fire Victim Trust prevents the Trust from
8 allocating its limited funds and further extends the time that claimants who timely filed their Fire
9 Victim Claims must wait for final payments, thus delaying the administration of Fire Victim
10 Claims and prejudicing those who hold timely filed Fire Victim Claims with delay. As noted in a
11 recent letter to this Court from a Fire Victim, these delays "are holding up the rest of us!" [Dkt. No.
12 13365]. The extreme length of Movant's delay and the impact of a nearly three-year delay on the
13 final payment of timely filed Fire Victim Claims weighs heavily against deeming the Proof of
14 Claim timely.

15 **Timely Filing of the Proof of Claim was not Beyond Movant's Control**

16 10. The third *Pioneer* factor, whether the delay was beyond the late claimant's control,
17 also weighs against granting the relief requested in the Motion. As explained above, the Motion
18 does not provide any basis for a finding of excusable neglect. While the Motion explains Movant's
19 housing challenges, those challenges do not appear to be the reason the Proof of Claim was not
20 filed until recently. Rather, it appears that the Proof of Claim was not filed timely because Movant
21 was not aware until recently that her claims may be compensable. Ignorance of the need to file a
22 claim is not a sufficient excuse. *See Pioneer*, 507 U.S. at 392, 113 S. Ct. at 1496.

23 11. Although the Trust does not minimize Movant's claims in any way, tens of
24 thousands of other claimants with similar claims arising from the North Bay Fires were able file
25 timely proofs of claim. This Court determined that notice to all potential Fire Victims was
26 sufficient in connection with both bar orders. The third *Pioneer* factor therefore must also be
27 decided in favor of the Trust and the Fire Victims who have made the effort to engage with the
28 Trust.

1 **Even Without Bad Faith, Equity Does Not Favor Movant Over Other Fire Victims**

2 12. While the Trustee does not believe that Movant lacks the good faith that comprises
3 the final consideration listed by the *Pioneer* court, the Motion fails to state any facts that justify
4 Movant's nearly three-year delay in filing the Proof of Claim.

5 13. In addition, as is evidenced by overwhelming number of late claim motions filed
6 within the last two weeks alone, allowing the Proof of Claim to be deemed timely filed without
7 extenuating circumstances would encourage other latecomers to file similar motions.

8 14. For the foregoing reasons, Movant fails to meet her burden for establishing
9 "excusable neglect" for filing the Proof of Claim nearly three years after the Extended Bar Date.
10 The Proof of Claim therefore should not be deemed timely for the purpose of administration by the
11 Trust.

12 **CONCLUSION**

13 The Trustee respectfully requests that this Court deny the relief requested in the Motion and
14 grant the Trust such other and further relief as may be just.

15 DATED: December 21, 2022

BROWN RUDNICK LLP

16
17 By: /s/ David J. Molton

18 David J. Molton (SBN 262075)
19 (DMolton@brownrudnick.com)
20 Seven Times Square
21 New York, New York 10036

22 And

23 Joel S. Miliband (SBN 077438)
24 (JMiliband@brownrudnick.com)
25 2211 Michelson Drive, Seventh Floor
26 Irvine, California 92612

27 *Attorneys for Fire Victim Trustee*
28